THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.22392 of 1996

Dated 26-09-2005

Between:

Siddha Veerabhadrarao. ….Petitioner

and

Special Deputy Tahsildar, Rampachodavaram,

and six others.

….Respondents

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.22392 of 1996

ORDER:

This writ petition is filed questioning the order dated 11-09-1996 passed by the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram(second respondent) under the provisions of the Andhra Pradesh Scheduled Area Land Transfer Regulation 1 of 1959 in LTRP.No.14 of 1996.

The main contention of the learned counsel for the petitioner is that the petitioner was served with a notice in LTRP.No.14 of 1996 on 11-08-1996 asking him to appear on 13-08-1996 before the second respondent and when on 13-08-1996 petitioner requested for time, second respondent, at the instance of the Collector (third respondent), without granting any further time, passed the order impugned and so the order impugned is liable to be set aside as violative of principles of natural justice and being violative of Rule 7 of the Andhra Pradesh Scheduled Areas and Land Transfer Rules, 1969 (hereinafter referred to as 'Rules'). It is also his contention that the petitioner did not avail the remedy of appeal because the Collector was physically present in the office of the second respondent since he is interested in dispossessing the petitioner. It is his further contention that the order impugned is clearly violative of principles of natural justice because the notice issued is to show cause why the petitioner should not be ejected from the land, but the order reads as if the petitioner is not in possession of the land and tribals are in possession, and contends that when petitioner is not in possession of the land and tribals are in possession thereof, question of respondents 2 and 3 invoking the provisions of the Regulation does not arise.

The contention of the learned Government Pleader that the matter was heard only after giving sufficient opportunity to the petitioner, and as the petitioner did not make either oral or written request for time to present his case, and was in a hurry to occupy the lands of the tribals by using force, the order impugned has to be passed. It is also his contention that the findings in O.S.No.61 of 1967 on the file of the

Court of the District Court, Rajahmundry, and in A.S.No.236 of 1973 on the file of this Court show that tribals are in possession of the land.

Though this Court would not normally interfere with appealable orders, when the petitioner files the petition without exhausting the remedy of appeal available to him, since the allegation of the petitioner is that the order impugned was passed at the instance of the third respondent who is the appellate authority, and which fact is being disputed by respondents 2 and 3, since there is *prima facie* violation of Rule 7 of the Rules, which appears to be mandatory in nature, I am inclined to interfere, in spite of the petitioner failing to avail the remedy of appeal to the third respondent. Notice in Form B signed by the second respondent on 09-08-1996 issued to the petitioner, produced by the petitioner with this petition shows that he was directed to appear before the second respondent on 13-08-1996. So even assuming that the said notice was served on the petitioner on the very next day i.e., 10-08-1996 since the order impugned shows that the matter was heard by the second respondent on 13-08-1996 itself, there is clear violation of Rule 7 of the Rules, which mandates the notice being granted at least 15 days time for his appearance from the date of service of notice on him. Since that mandatory rule is not followed in this case, the petition deserved to be allowed.

I also find force in the contention of the learned counsel for the petitioner that since the notice served on the petitioner directs him to show cause why he should not be ejected, a finding that since petitioner is not in possession, and that tribals are in possession, apart from being improper would also not empower the second respondent invoking the jurisdiction under the Regulations, because the provisions of the Regulation can be invoked only when a non-tribal, but not a tribal, is in possession of a land in an agency area.

For the above reasons, petition is allowed with costs against the second respondent. Rule Nisi is made absolute. Order of the second respondent dated 11-09-1996 LTRP.No.14 of 1996 is set aside and

the case is remitted to the second respondent for fresh disposal according to law after affording a due opportunity of being heard to the petitioner, who shall file his reply (written statement/counter) in the case before the second respondent within a period of six weeks from today.

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(C.Y. SOMAYAJULU, J)

Date: 26-09-2005

ghn